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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,542	09/23/2003	Gregory Piskun	P29-004	2121

7590 10/14/2005

R. Neil Sudol  
714 Colorado Avenue  
Bridgeport, CT 06605-1601

EXAMINER

FLANAGAN, BEVERLY MEINDL

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/668,542	<b>Applicant(s)</b> PISKUN, GREGORY	
	<b>Examiner</b> Beverly M. Flanagan	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-16, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31, 33-37 and 40 is/are rejected.
- 7) ☒ Claim(s) 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
 BEVERLY M. FLANAGAN  
 PRIMARY EXAMINER

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of the invention of Group II (claims 17-37 and 40) in the reply filed on August 1, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 1-16, 38 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

**An action on the merits to the elected invention follows hereinafter:**

### ***Information Disclosure Statement***

The information disclosure statement filed June 10, 2005 has been made of record and the references cited therein have been considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17-25, 28-31, 33-35 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Bimbo et al. (U.S. Patent No. 6,551,270).

**In regard to claims 17, 28, 29 and 33**, Bimbo et al. teach a port assembly 60 having an outer housing 62 with an enlarged upper section 64, a reduced diameter section 66 and an expanded lower section 68 (see Figures 8-12). An access opening 70 in middle section 66 has a pair of openings 72, 74 for passage of instruments and opening 70 is preferably formed of a resilient material (see col. 8, lines 1-15). Figures 8-12 show that access opening 70 constitutes a plate member with a surrounding edge, housing 62 constitutes a wall surrounding the access opening 70 that is connected to the opening 70 all along the surrounding edge where the housing 62 has a longitudinal axis and the access opening 70 extends substantially transversely to the longitudinal axis. **In regard to claims 18 and 19**, Figures 8-12 show that the access opening 70 and the housing 62 each have a height dimension extending parallel to the longitudinal axis and the height dimension of the housing 62 is greater than the height dimension of the access opening 70. **In regard to claims 20, 21 and 34**, Figure 11 shows that the housing 62 has two end portions (upper section 64 and lower section 68) that extend as endless flanges to the access opening 70. **In regard to claims 22 and 23**, Figure 11 shows that the access opening 70 is located at one end of the housing 62 (i.e., the inner end). **In regard to claim 24**, Figure 11 shows that the access opening 70 and the housing 62 form a cup shape. **In regard to claim 25**, Figure 11 shows that the housing 62 has a first inner diameter at the access opening 70 and a second inner diameter at an end opposite the access opening and the second inner diameter is larger than the

first inner diameter. **In regard to claim 30**, Figure 11 shows that the access opening 70 is provided at the openings 72, 74, with extensions elongating the apertures. **In regard to claim 31**, Figure 11 shows that the access opening 70 has a first height dimension extending parallel to the longitudinal axis and the extensions have a second height dimension extending parallel to the longitudinal axis and the first height dimension is at least as great as the second height dimension. **In regard to claim 35**, one of the openings 72, 74 could be used as a gas channel for the introduction of an insufflation gas into a patient.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bimbo et al. (U.S. Patent No. 6,551,270) in view of Bonadio (U.S. Patent No. 5,803,921).

**In regard to claims 26 and 27**, Bimbo et al. are silent as to the access opening 70 or housing 62 being inflatable. However, Bonadio discloses an inflatable access port device 40 for introducing surgical instruments (see Figures 10-27 and col. 7, lines 55-65). Bonadio thus demonstrates that inflatable access port devices for surgical instruments are well known in the art. Since Bimbo et al. disclose that the access

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opening 70 and housing 62 are resilient, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the opening 70 and housing 62 inflatable, as a means to further anchor the device in the incision.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bimbo et al. (U.S. Patent No. 6,551,270) in view of Yoon (U.S. Patent No. 5,540,648).

**In regard to claims 36 and 37**, Bimbo et al. are silent as to an anchoring element for the device. However, Yoon discloses a similar medical instrument introduction device having an anchoring system, 24 comprised of anchoring needles 26 that can be retracted (see col. 4, lines 55-65). Yoon thus demonstrates that anchoring devices for medical instrument introducers are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the device of Bimbo et al. with the anchoring system 24 disclosed by Yoon.

#### ***Allowable Subject Matter***


Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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